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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Case No. 06-466Z

Plaintiff,

Seattle, Washington

November 19, 2009

vs.

DAVID R. MENDOZA,

Defendant.

SENTENCING HEARING
VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE THOMAS S. ZILLY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

Susan Roe
Roger Rogoff
Richard Cohen

For the Defendant:

Jeffery Robinson
Todd Maybrow
Colette Tvedt

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P R O C E E D I N G S

14:27:26 3 THE CLERK: Case No. 06-466Z, United States of
14:27:29 4 America versus David R. Mendoza. For the record, Counsel,
14:27:29 5 will you please stand and make your appearances.

14:27:36 6 MS. ROE: Good afternoon, Your Honor, Susan Roe on
14:27:36 7 behalf of the United States.

14:27:40 8 MR. ROGOFF: Roger Rogoff.

14:27:40 9 MR. COHEN: And Richard Cohen.

14:27:43 10 MR. ROBINSON: Good afternoon, Your Honor,
14:27:44 11 Jeffrey Robinson for Mr. Mendoza.

14:27:46 12 MS. TVEDT: Good afternoon, Your Honor, Colette Tvedt
14:27:48 13 for Mr. Mendoza.

14:27:50 14 MR. MAYBROWN: And good afternoon, Your Honor,
14:27:51 15 Todd Maybrown, also on behalf of Mr. Mendoza. I've been
14:27:54 16 helping with the related case. I have previously been before
14:27:59 17 the Court.

14:28:00 18 THE COURT: You want to keep your voice up when you
14:28:00 19 speak.

14:28:01 20 Are the parties ready to proceed with sentencing in this
14:28:01 21 matter?

14:28:04 22 MR. ROBINSON: We are, Your Honor.

14:28:04 23 MS. ROE: We are, Your Honor.

14:28:06 24 THE COURT: Mr. Robinson, did you want to say
14:28:09 25 something preliminary in nature before we started? You

14:28:12 1 started to say something then Mr. Mendoza came into --

14:28:15 2 MR. ROBINSON: No, no, Your Honor.

14:28:18 3 THE COURT: All right. Did the defendant receive the
14:28:24 4 presentence report provided as of October 23 and the
14:28:28 5 sentencing recommendations of Probation?

14:28:30 6 MR. ROBINSON: We did, Your Honor.

14:28:33 7 THE COURT: All right. In addition, I received and
14:28:34 8 reviewed the plea agreement. Of course, I took the plea
14:28:37 9 agreement, as I recall. The sentencing memo of Mr. Mendoza
14:28:41 10 and various attachments, letters, all of which I have read,
14:28:45 11 the government's sentencing memo.

14:28:49 12 Anything else I should have received and I didn't?

14:28:52 13 MR. ROBINSON: No, Your Honor, not from Mr. Mendoza.

14:28:54 14 THE COURT: Are there any factual disputes of the
14:28:56 15 facts stated in the presentence report for purposes of
14:28:58 16 sentencing?

14:29:00 17 MR. ROBINSON: Could I have just a second, Your
14:29:00 18 Honor?

14:29:14 19 THE COURT: Sure.

14:29:14 20 MR. ROBINSON: Your Honor, there was a -- it was an
14:29:21 21 amendment to the presentence report dealing with what is now
14:29:25 22 paragraph 116, the impact of the plea agreement. And there
14:29:28 23 is a clarification --

14:29:31 24 THE COURT: Just a moment, did you say 116?

14:29:34 25 MR. ROBINSON: 116. And there is a clarification

14:29:43 1 that Ms. Moore added to the presentence report. I -- it's a
14:29:46 2 bit technical, but I guess I would ask that the reference
14:29:53 3 that Mr. Mendoza's offense may have involved at least 3,000
14:29:58 4 kilograms. I'd ask that that be stricken. Because I think
14:30:02 5 the evidence is that Mr. Mendoza has acknowledged that he was
14:30:06 6 involved in the importation of over 1,000 kilograms. There
14:30:10 7 is a difference in opinion about exactly how much it was.
14:30:14 8 But I don't think the government can indicate to you that
14:30:18 9 they have proof beyond a reasonable doubt that Mr. Mendoza
14:30:21 10 was involved in 3,000 kilograms.

14:30:24 11 I think Ms. Moore has appropriately indicated that this is
14:30:27 12 a possibility. But I don't think that this report, which is
14:30:31 13 going to follow Mr. Mendoza through the Bureau of Prisons,
14:30:34 14 should have that kind of speculation in it about an amount of
14:30:38 15 marijuana that was neither pled in the indictment nor proven
14:30:43 16 nor that Mr. Mendoza has ever acknowledged. So my only
14:30:48 17 request is that sentence be stricken.

14:30:51 18 THE COURT: What's the government's position?

14:30:53 19 MS. ROE: Your Honor, the government did not know
14:30:54 20 that the defense was going to ask for this. The government
14:30:56 21 was not prepared to bring evidence or proof of that. The
14:31:00 22 government believes it's quite clear it was closer to 3,000
14:31:03 23 pounds than 1,000 pounds. Although the elements of offense
14:31:06 24 are more than 1,000 pounds.

14:31:08 25 When the Court looks at the facts and the other people,

14:31:10 1 there are 11 people serving prison terms who imported
14:31:14 2 marijuana or flew it over on Mr. Mendoza's behalf. And those
14:31:19 3 people's testimony in addition to the one of Ms. Hinkley
14:31:23 4 (phonetic) acknowledged in the plea statement indicates it
14:31:27 5 was well in excess of a couple thousand pounds; it may have
14:31:30 6 been more than 3,000 pounds.

14:31:32 7 THE COURT: Pounds or kilograms?

14:31:36 8 MS. ROE: Kilograms.

14:31:37 9 THE COURT: I think the statement is ambiguous
14:31:41 10 because it talks about may have involved. It's the probation
14:31:47 11 officer's role to talk to and learn from what witnesses would
14:31:52 12 say. And this is not a finding. Of course this is a
14:31:59 13 11(c)(1)(c) plea.

14:32:03 14 MR. ROBINSON: And, Your Honor, I do acknowledge that
14:32:04 15 there was a clarification that Ms. Moore had --

14:32:06 16 THE COURT: I think it would be fair to say that
14:32:08 17 there's substantial reason to believe that the offense
14:32:12 18 involved substantially more than 1,200 kilograms of marijuana
14:32:20 19 that he's acknowledged in his plea agreement. I'm going to
14:32:25 20 leave paragraph 116 in its present form.

14:32:28 21 Let me just state before I hear from counsel that having
14:32:32 22 reviewed the -- when I took the plea, I accepted the plea,
14:32:38 23 but reserved and deferred on whether I would accept the plea
14:32:44 24 agreement. The plea agreement of course is pursuant to
14:32:48 25 paragraph 11(c)(1)(c) which binds me if I accept the plea

14:32:55 1 agreement to sentence the defendant, and that sentence is a
14:33:00 2 fixed amount. And that amount is 168 months.

14:33:08 3 MR. ROBINSON: That's correct, Your Honor.

14:33:09 4 THE COURT: I'm satisfied having that reviewed all of
14:33:12 5 the materials, the plea agreement, the presentence report and
14:33:15 6 the sentencing memos that I should and I now do accept the
14:33:19 7 plea agreement and intend to sentence the defendant to the
14:33:26 8 amount that he has agreed to and the government has agreed
14:33:30 9 to.

14:33:30 10 Now, having said that, it may shorten in some way your
14:33:33 11 remarks.

14:33:34 12 MR. ROBINSON: It does, Your Honor.

14:33:36 13 THE COURT: And that was the purpose of my telling
14:33:38 14 you early.

14:33:39 15 MR. ROBINSON: Thank you, very much.

14:33:40 16 Your Honor, Mr. Mendoza's parents, Albert Emanuel and
14:33:44 17 Maria Teresa Emanuel are in the courtroom. His wife, and her
14:33:50 18 father are also in the courtroom. His children are young
14:33:53 19 enough that we didn't think it was appropriate for them to be
14:33:56 20 here.

14:34:01 21 I want to make my remarks brief. And I think the thing
14:34:05 22 that I would like to say about David Mendoza is that on the
14:34:12 23 one hand he's got nobody to blame but himself for sitting
14:34:16 24 here under these circumstances. He had two prior convictions
14:34:21 25 of very similar behavior. He had the knowledge when he came

1 out of prison after his second conviction that continuing
2 that behavior would likely end up in a very, very strict
3 sentence, and that is what he has bought and paid for with
4 his behavior and is what he's here to accept today.

5 I think that there is a temptation sometimes to view an
6 individual like Mendoza -- like Mr. Mendoza as nothing more
7 than the accumulation of his convictions.

8 THE COURT: Let me just interrupt you for a moment.
9 You said two convictions. He was convicted and sentenced by
10 Judge Rothstein to 70 months and then he got revoked in -- is
11 that the second -- there's just one felony conviction; is
12 that right?

13 MR. ROBINSON: No, Your Honor, there are actually
14 two. There is an earlier conviction I believe from the State
15 of Nevada.

16 THE COURT: All right.

17 MR. ROBINSON: And --

18 THE COURT: And that doesn't count because it's --
19 all right. That was a juvenile conviction. Well, it wasn't,
20 he was age 25. But we don't score it because of -- all
21 right. Go ahead.

22 MR. ROBINSON: Your Honor, the thing that I just want
23 to highlight for you is that I think Mr. Mendoza is a very
24 complicated man. On the one hand, he has imported marijuana
25 in extremely large quantities into the United States, and he

14:35:53 1 has made significant amounts of money from that.

14:35:55 2 On the other hand, he has assisted people in his community
14:36:00 3 who are homeless. He has paid for reconstructive surgery for
14:36:05 4 a person who needed facial reconstruction; somebody he had no
14:36:10 5 familial relationship with. He has reached out to people
14:36:14 6 who, quite frankly, have needed assistance and help and done
14:36:18 7 it in a selfless way that boggles the mind to some extent to
14:36:22 8 try and figure out how can a man who will act in that regard
14:36:28 9 then turn his quite significant abilities and talents to
14:36:33 10 something as wasteful as importing marijuana into the United
14:36:37 11 States.

14:36:38 12 I can't give you and I can't satisfy for myself with a
14:36:42 13 real complete explanation of how this came about for a third
14:36:46 14 time. But what I can say to you is that including everything
14:36:51 15 Mr. Mendoza has said to other judges who have been looking at
14:36:55 16 him in similar circumstances, Mr. Mendoza understands where
14:37:01 17 he is and why he's here. He understands that he is likely
14:37:06 18 going to say goodbye to his parents through bars. Because
14:37:11 19 they're elderly and they likely won't be around when he comes
14:37:14 20 out of prison.

14:37:15 21 One thing that's different from his appearance in front of
14:37:18 22 Judge Rothstein is that Mr. Mendoza has two children. And
14:37:23 23 I've had the pleasure of meeting both of them and having
14:37:26 24 never interacted with a Down syndrome child before, I can
14:37:30 25 tell you that it was a powerful experience to be in the room

14:37:37 1 with that young child. And I know from talking to
14:37:42 2 Mr. Mendoza, from talking to his parents and his wife, the
14:37:47 3 depths of the love that Mr. Mendoza has for that child. And
14:37:50 4 I know that he is suffering because he is not going to be
14:37:53 5 with that child to provide the significant help that that
14:37:58 6 child needs as that child grows up.

14:38:00 7 And I say again, not meant for sympathy, he's got nobody
14:38:05 8 to blame but himself. But I think that this is a man who has
14:38:09 9 a family that loves him, that supports him, and that will be
14:38:14 10 there for him to the extent they can when he comes out of
14:38:16 11 prison. Mr. Mendoza is 45 years old at this point, and so he
14:38:21 12 is going to be in a significantly different place in his life
14:38:24 13 when he comes out of prison after serving his sentence.

14:38:28 14 I thank the Court for accepting the plea agreement. I
14:38:30 15 think that it is appropriate. It's something that was
14:38:33 16 negotiated over a significant amount of time and effort with
14:38:40 17 the government. And I would thank the government for
14:38:42 18 negotiating with us. Judge Martinez conducted a settlement
14:38:46 19 conference. And I think it was through those efforts that
14:38:49 20 we're here today with the sentence we're asking the Court to
14:38:52 21 impose.

14:38:52 22 I would indicate that we will ask the Court to accept the
14:39:01 23 plea agreement as you've indicated that you have, but to not
14:39:01 24 sign the judgment today. Because we are going to be asking
14:39:05 25 you to set a briefing schedule on an issue that we think is

14:39:08 1 significant raised in both the government's memo and in our
14:39:11 2 memo alluded to in the presentence report, and that is the
14:39:15 3 issue of where Mr. Mendoza will serve his sentence. I think
14:39:20 4 the government believes that this is an issue that is not
14:39:24 5 before this Court; we disagree. And Mr. Maybrown has
14:39:30 6 actually been the person who has done the background work on
14:39:32 7 this issue. And so we would like to ask the Court to set a
14:39:36 8 briefing schedule. Because we believe that the Court has
14:39:40 9 both the responsibility and the authority to order that
14:39:43 10 Mr. Mendoza serve his sentence in the country of Spain.

14:39:47 11 So if the Court has further questions about that issue,
14:39:51 12 with your permission I'd like to hand off to Mr. Maybrown
14:39:56 13 because I think he is more up on those issues than I am.

14:39:59 14 THE COURT: You better hand it off, because I'm not
14:40:00 15 much inclined to do that.

14:40:00 16 MR. ROBINSON: Thank you.

14:40:14 17 MR. MAYBROWN: Good afternoon, Your Honor. I think
14:40:17 18 I've been asked to address this issue because I have a little
14:40:20 19 bit more familiarity having dealt with this issue as it
14:40:24 20 bubbled up through the forfeiture proceedings.

14:40:32 21 THE COURT: Let me ask you this. Let's just start
14:40:33 22 with the plea agreement, Mr. Maybrown. Is there anything in
14:40:34 23 the plea agreement that deals with the subject of where he
14:40:39 24 serves his sentence?

14:40:41 25 MR. MAYBROWN: I don't think the plea agreement

14:40:42 1 speaks to that --

14:40:42 2 THE COURT: Having taken the plea I think I asked
14:40:45 3 Mr. Mendoza under oath was there was any other agreement of
14:40:47 4 any kind that he had with the government other than what was
14:40:50 5 contained in the written plea agreement. I do that every
14:40:54 6 time, I'm sure we would find it in the record if we took the
14:40:57 7 transcript. Assuming that's the case, that subject was not
14:41:03 8 mentioned in any way, was it?

14:41:05 9 MR. MAYBROWN: I cannot say. I wasn't present when
14:41:06 10 the Court took the plea. I would have to defer to
14:41:10 11 Mr. Robinson on that point. But I think that this matter was
14:41:14 12 an agreement between the executive bodies of the government
14:41:18 13 of Spain and the United States and was before the Court
14:41:23 14 through information that the Court had even today before the
14:41:27 15 Court decided to accept the plea.

14:41:29 16 THE COURT: And your position is that there is some
14:41:31 17 agreement between the executive branch of this government and
14:41:35 18 the executive branch of the Spanish government that would
14:41:42 19 require that he be allowed to serve his sentence in Spain?

14:41:47 20 MR. MAYBROWN: That's correct, Your Honor. And I
14:41:48 21 also believe that there's some case law that I can point the
14:41:50 22 Court to in briefing which would I think convince the Court
14:41:54 23 that it is a condition of the extradition that the Court
14:41:57 24 could enforce and would have the power to enter an order to
14:42:04 25 give effect to that agreement.

1 Now, the disagreement that we have with government I think
2 are twofold. One, I saw in pleadings that the government
3 claims that there wasn't this agreement reached. And we've
4 asked, I think Mr. Robinson asked for them to provide any
5 documentation to support that. And I don't think that
6 there's been a response. So first, I'd like to just at least
7 have an opportunity to see what that information is based
8 upon so we can present that to the Court so the Court would
9 know whether, in fact, there was an agreement. It might be a
10 very short issue to resolve the fact the government does have
11 that information. But everything we've seen --

12 THE COURT: Well, if there was an agreement, couldn't
13 you come back into court and say, Judge, there's an
14 agreement?

15 MR. MAYBROWN: Well, I think we could, Your Honor,
16 but I'm afraid that if the Court was to sign the judgment and
17 sentence that the government would then argue that the Court
18 has vested itself of jurisdiction, and at this point
19 regarding the case and it seems to me that the most prudent
20 way to handle this would be to see the briefing and decide
21 whether at the same time the Court signed the judgment it
22 felt it was appropriate to sign an order directing that
23 Mr. Mendoza be turned over to the proper authorities.

24 THE COURT: Well, this issue's been on the table
25 since I know before last spring. Because we had the question

1 of when he was coming back and what the conditions were and
2 the like. Now, I took his plea quite a while ago. And we
3 continued this hearing a couple of times and now you're
4 telling me on the day of the hearing for the first time you
5 don't want me to sign the judgment? And that there might be
6 briefing on whether or not I should enforce some agreement
7 which you haven't given me any, you know -- I can tell you
8 that the materials I reviewed in early spring suggested that
9 there was no agreement between the government and it was not
10 a condition of his being returned to the United States.

11 But tell me again why it is that I should not sentence him
12 today and sign the judgment?

13 MR. MAYBROWN: Your Honor, I would think that based
14 on all the information that we have there was an agreement
15 actually reached between the two governments and that was a
16 specific condition of the extradition. And if that is
17 accurate, and for the first time I heard recently in
18 pleadings that I've seen from the government that they're
19 disagreeing with that position.

20 But obviously, we think that if, in fact, we're correct
21 then the Court would want to make an appropriate ruling
22 consistent with the extradition, since, for example, if the
23 extradition had been conditioned on him not serving more than
24 ten years the Court would not want to impose a sentence of 14
25 years if, in fact, the Court knew and had proof that was part

1 of the agreement. And there were cases which deal with these
2 issues which make it very clear that the Court does have the
3 power and the authority to make a ruling in this regard.

4 Now, I understand that the government disagrees. I just
5 thought that the most appropriate way to deal with it would
6 be to set a reasonable schedule -- Mr. Mendoza is sentenced
7 to a long sentence; he's going to be in custody regardless.
8 So it doesn't seem like any prejudice could be available to
9 either party if he was held pending the Court resolve the
10 issue.

11 Now, if the Court looks at the material and says, I don't
12 think there's an agreement, we'd like to know about it. If
13 the Court looks at it and says, Yes, I think there is an
14 agreement here, then I think the Court would want to say,
15 What do I now that I believe that there was, in fact, an
16 agreement.

17 THE COURT: Well, I would doubt very much whether I'd
18 have jurisdiction to decide that issue. I mean, if there was
19 an agreement between the two governments you can go into some
20 federal court here or somewhere else and bring an appropriate
21 action to enforce an agreement. He's been charged with
22 criminal offense. And I'm going to sentence him and I'm
23 going to sign that judgment today. So I understand your
24 arguments. I just fail to believe that they merit my
25 delaying the formal signing of the judgment.

14:46:25 1 Counsel, did you finish your remarks?

14:46:28 2 MR. ROBINSON: Your Honor, with your permission, I'll
14:46:30 3 just add one thing. This was not the subject of anything
14:46:34 4 having to do with the plea agreement. I want to be clear,
14:46:37 5 Mr. Mendoza in no way giving up his right to raise this issue
14:46:42 6 before you by signing that plea agreement. He did not agree
14:46:45 7 with the government, well, I won't raise this issue in front
14:46:48 8 of Judge Zilly in exchange for the plea agreement.

14:46:51 9 So while you are right; there is no agreement between the
14:46:55 10 parties about this issue, the plea agreement does not prevent
14:47:00 11 Mr. Mendoza from asking you to address this issue. And I
14:47:04 12 understand the Court's decision on that. I suppose that if
14:47:08 13 necessary and appropriate we can come back to the Court and
14:47:12 14 ask you to amend the judgment if we find the authority that
14:47:16 15 would be persuasive to ask you to do that.

14:47:18 16 THE COURT: Does your client wish to be heard?

14:47:23 17 MR. ROBINSON: I think just briefly, Your Honor.

14:47:24 18 THE COURT: Would you use the podium, please.

14:47:26 19 THE DEFENDANT: Good afternoon, Your Honor.

14:47:26 20 THE COURT: Good afternoon, sir.

14:47:36 21 THE DEFENDANT: Where am I going to start here? Let
14:47:38 22 me start with apologizing first to you.

14:47:42 23 THE COURT: There are people behind you --

14:47:45 24 THE DEFENDANT: I'm going to get to them, please.

14:47:46 25 THE COURT: I'd start there.

14:47:51 1 THE DEFENDANT: Okay. I've got a long road to hoe
14:47:53 2 with these people behind me -- my parents, my family. A long
14:47:58 3 time to at least begin to start some trust with them again.
14:48:05 4 Hopefully, hopefully, they will open to be able to do that
14:48:11 5 with me over these 14 years.

14:48:14 6 With you I know it's not easy to sentence a man to a
14:48:17 7 considerable amount of time in prison. I apologize for my
14:48:23 8 actions making you do that. I also need to apologize to
14:48:30 9 Ms. Roe because I know I've been a thorn in your side for
14:48:33 10 quite some time. And I want to apologize to her. I also
14:48:38 11 want to say thank you. I didn't have an opportunity to say
14:48:41 12 thank you to her at the time that we were going through
14:48:43 13 arbitration. She attempted to get a lighter range for Your
14:48:48 14 Honor to choose from. And that was shot down by her boss.
14:48:53 15 But I want to thank her for attempting to do that for me.
14:48:56 16 I'm not saying that she would have recommended a lower
14:48:58 17 guideline range, but I suspect she would have gone for the
14:49:01 18 high end. But she gave me the opportunity for that.

14:49:05 19 Again, I brought myself in front you. I suspect it's not
14:49:11 20 often that somebody comes in front of a federal court twice
14:49:14 21 in their lifetime. I'm sorry for this. I have no excuse for
14:49:18 22 it. Thank you.

14:49:25 23 MS. ROE: Your Honor, he's an unusual defendant for
14:49:31 24 today. This is a man who came to this country or was born in
14:49:35 25 this country and had every benefit America had to offer. His

14:49:39 1 parents were immigrants, they were educated. He was raised
14:49:42 2 in a loving family. He received a good education and he had
14:49:44 3 the world at his feet. And he is now here in court for the
14:49:47 4 third time facing a drug trafficking charge.

14:49:51 5 The government agreed to significant benefits by this
14:49:55 6 drug -- by this 11(c)(1)(c) plea. He was facing a minimum
14:50:00 7 mandatory term of 20 years because of the prior sentencing
14:50:02 8 enhancements. Not only are we agreeing to dismiss that upon
14:50:06 9 imposition of the judgment, but we are agreeing that we will
14:50:09 10 not continue the investigation into Mr. Mendoza's other
14:50:12 11 activities or into those of his wife. And that had been a
14:50:15 12 separate investigation brought about before we knew she was
14:50:18 13 married to him.

14:50:20 14 He has agreed to forfeit four properties and I'm deferring
14:50:23 15 to Mr. Cohen on that, but I believe all four have clear title
14:50:28 16 today.

14:50:28 17 THE COURT: I'm sorry, all four are?

14:50:28 18 MS. ROE: Have clear title today, I believe.

14:50:33 19 MR. COHEN: That is correct, Your Honor.

14:50:34 20 THE COURT: Thank you.

14:50:34 21 MS. ROE: And so we are asking the Court to impose
14:50:36 22 168 months and five years of supervised release. And to
14:50:39 23 order the forfeiture of those properties as a term of the
14:50:43 24 sentence.

14:50:44 25 THE COURT: All right, Mr. Mendoza, you want to --

14:50:49 1 THE PROBATION OFFICER: Your Honor, I apologize, I
14:50:49 2 just noticed on my sentencing it should be a Criminal History
14:50:53 3 Category of II. The sentencing range is correct, but I just
14:50:54 4 noticed on the sentencing recommendation green sheet listed
14:50:57 5 as a I.

14:50:59 6 THE COURT: And with the acceptance which you didn't
14:51:03 7 give what would that --

14:51:09 8 THE PROBATION OFFICER: He would be 235 to 293
14:51:13 9 months.

14:51:13 10 THE COURT: 37, II? I'm not sure that I found those
14:51:18 11 guidelines for purposes of sentencing. So I should do that
14:51:22 12 now. Let me just -- other than the one objection you don't
14:51:29 13 have any other objections to the statement of facts or to the
14:51:33 14 facts contained in the presentence report; is that right?

14:51:35 15 MR. ROBINSON: I do not, Your Honor. I want to be
14:51:38 16 clear I think I may have misheard. I think Mr. Mendoza has
14:51:42 17 earned acceptance of responsibility --

14:51:43 18 THE COURT: Yes.

14:51:45 19 MR. ROBINSON: -- and so I don't have any other
14:51:45 20 objection.

14:51:46 21 THE COURT: Well, I am going to adopt for purposes of
14:51:50 22 the record facts stated in the presentence report. And I
14:51:52 23 find that he has earned acceptance of responsibility and with
14:51:59 24 that adjustment his total offense level is a 37 for purposes
14:52:01 25 of guideline computation. His Criminal History Category is

11. And his range under the guidelines would be 235 months to 293 months.

But the parties have entered into an 11(c)(1)(c) plea arrangement, which I think under the circumstances in considering all the factors that I would normally have to consider and in determining an appropriate sentence it is a reasonable amount of time. It's a tremendous amount of time.

On the other hand, Mr. Mendoza, you truly did have all the opportunities in the world. You graduated, I think you were president of the Garfield High School. You went into college and got a degree. And then somewhere shortly thereafter you got involved in drugs. And it's tragic. It was tragic, you know, you should have listened to Judge Rothstein when she sent you to jail for 70 months. That's a long time.

And tragically, some of the people that you met, I think it was at Sheridan, come out with you and get into this new venture which now brings you before this Court for a sentence which is a tremendous amount of time. But you don't have anybody to blame but yourself.

And so without further ado, I'm going to as to Count 1 commit you to the Bureau of Prisons for a sentence of 168 months. Upon release from prison you'll serve a period of five years of supervised release subject to the standard conditions in each of the special conditions contained in the sentencing recommendations. I find the defendant does not

14:54:05 1 have an ability to pay a fine. I will waive the fine, assess
14:54:08 2 the \$100 special assessment. And advise you, sir, that to
14:54:17 3 the extent you have any rights of appeal that were not waived
14:54:20 4 in the plea agreement. Any appeal must be filed within ten
14:54:26 5 days of today when I sign the judgment in this case.

14:54:32 6 Do you want a recommendation on placement given the issues
14:54:36 7 that you raised earlier?

14:54:38 8 MR. ROBINSON: Your Honor, I do not believe so. And
14:54:47 9 I'll just leave it at that. I don't believe that we'd like
14:54:49 10 the Court to make a recommendation.

14:54:52 11 THE COURT: All right.

14:54:54 12 MR. ROBINSON: Your Honor, I should indicate that I
14:54:55 13 have in front of me a preliminary order of forfeiture. I
14:54:59 14 have reviewed that with Mr. Mendoza. I believe that these
14:55:04 15 deal with the four properties that were the subject of the
14:55:06 16 plea agreement. I think the order is in its proper form.
14:55:11 17 I've signed it. And I'm having Mr. Mendoza sign it now
14:55:15 18 before we hand it up to the Court.

14:55:25 19 MS. ROE: I've prepared a judgment which I've handed
14:55:30 20 to Ms. Tvedt.

14:56:01 21 MR. ROBINSON: Your Honor, I've reviewed the
14:56:01 22 judgment. And I believe it correctly reflects your order.

14:56:06 23 THE COURT: Any objection to the order of
14:56:08 24 forfeitures? I'm not sure if there's one or four.

14:56:11 25 MR. ROBINSON: There is one order of forfeiture. It

1 relates to the four properties.

2 THE COURT: Preliminary order?

3 MR. ROBINSON: Preliminary order, yes, Your Honor.

4 THE COURT: Any objection?

5 MR. ROBINSON: There is no objection to that.

6 MR. MAYBROWN: Your Honor, if I can note. We will be
7 dismissing motions that are pending in related forfeiture
8 proceeding now that the Court has accepted this plea that was
9 a condition of the agreement. And I'll also be dismissing an
10 appeal that's been pending in the Ninth Circuit relating to
11 the same matters that's also a condition of the plea.

12 THE COURT: Is there anything pending in my court?

13 MR. MAYBROWN: There's a motion for reconsideration
14 pending. It's been kicked off and so this Court ruled has on
15 that. And --

16 THE COURT: Can you have a motion to reconsider even
17 pending if you've appealed it?

18 MR. MAYBROWN: Well, that was one of the issues --
19 but because of new facts and, yes, you could.

20 THE COURT: So you're going to dismiss the appeal and
21 you're going to dismiss any -- the action here in this Court?

22 MR. MAYBROWN: Exactly.

23 THE COURT: I have signed the preliminary order of
24 forfeiture.

25 Ladies and gentlemen, I'm going to reflect that the

14:57:53 1 defendant has remained in the custody of the marshal. I've
14:58:13 2 signed the judgment. It will be filed.

14:58:16 3 Anything further to come before the Court?

14:58:17 4 MR. ROBINSON: No, Your Honor.

14:58:19 5 MS. ROE: No, Your Honor.

14:58:19 6 THE COURT: All right. We'll be in recess.

7 (Proceedings concluded.)

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9 C E R T I F I C A T E

10
11 I certify that the foregoing is a correct transcript from
12 the record of proceedings in the above-entitled matter.

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14 /S/ Nichole Rhynard, CCR, CRR, RMR
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